

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAULA A. DOUGLAS and U.S. POSTAL SERVICE,
POST OFFICE, Carson City, NV

*Docket No. 03-616; Submitted on the Record;
Issued May 12, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish that she sustained an injury in the performance of duty.

On January 15, 2002 appellant, then a 37-year-old clerk, filed a notice of occupational disease claim (Form CA-2) alleging that exposure to noise from an industrial-sized photocopy machine in her office had caused her to suffer a loss of hearing. She did not stop work.

In a report dated December 26, 2001, Dr. Ed Horgan, a Board-certified otolaryngologist, indicated that appellant alleged that she sustained hearing loss due to working near a large industrial copy machine. Dr. Horgan noted that appellant's examination was normal, although an audiogram showed a bilateral mild hearing loss, which was fairly equal for all pitches. He opined that appellant had mild hearing loss and he was not sure of the cause, as the picture on the audiogram was not typical of noise-induced hearing loss. Dr. Horgan advised that appellant try to separate herself from intense noise exposure.¹

The employing establishment provided a January 23, 2002 letter indicating the level of noise was not harmful to hearing.

In a December 6, 2001 statement, Curtis Hastings, a member of the safety committee, indicated that he had tried to get management to replace or move the copy machine on several occasions without success.

In a December 30, 2001 statement, Marvin Heinsman, the safety captain, also advised that he had tried to correct the problem regarding the copier on several occasions without success.

¹ Dr. Horgan advised that appellant follow up in six months for a repeat audiogram.

In an undated statement received by the Office of Workers' Compensation Programs on January 24, 2002, Sandy Teeter from the employing establishment advised that, although the copier noise was annoying, tests revealed that the noise level did not provide a health risk, that appellant was provided with earplugs and instructions to use them whenever the machine was running. In a separate statement received by the Office on January 25, 2002, she advised that a new copy machine had been ordered.

By letter dated January 31, 2002, the employing establishment challenged appellant's claim.

By letter dated March 14, 2002,² appellant was advised of a second opinion examination with Dr. Philip Schlager, a Board-certified otolaryngologist.

In a report dated April 5, 2002, Dr. Schlager noted that appellant did not have a history of recurrent infections, tinnitus or dizziness, ear pain or drainage from the ears. Further, he indicated that appellant was not treated with any ototoxic medications and there was no family history of hearing loss at a young age. Dr. Schlager noted that the timing of appellant's hearing complaints coincided with being exposed to the noise in the office. Further, he noted that the copy machine had been replaced. Dr. Schlager's examination showed that appellant was in no acute distress, her tympanic membranes were normal bilaterally, the Weber test did not lateralize, air conduction was greater than bone conduction bilaterally and extraocular muscles were intact. Further, he noted that the facial nerve was normal, the nose was clear, the oropharynx and oral cavity were normal with normal palatal elevation and normal tongue mobility, and the neck was without masses or bruits, the thyroid was not enlarged, there was no ataxia to gait and a review of her most recent audiogram showed normal hearing with excellent speech discrimination and normal tympanograms. Dr. Schlager opined that appellant had normal hearing and there was no support for a hearing loss. He advised that this could represent temporary threshold shift that could be seen with noise exposure; however, there was often a return to normal hearing after the noise exposure was removed. Dr. Schlager recommended verification at another time. Finally, he concluded that appellant's most recent audiogram suggested normal hearing.

In an April 18, 2002 decision, the Office denied appellant's claim for compensation, as she did not establish the fact of injury.

In a May 6, 2002 audiology report, Dr. Mark S. Weeks, an audiologist, indicated that appellant was tested due to her complaint of noise exposure at her place of employment. He noted her previous test indicating she had a mild bilateral hearing loss. Dr. Weeks concluded that appellant's hearing was within normal limits bilaterally. He also stated that the speech reception threshold confirmed pure-tone findings bilaterally and discrimination was normal at 100 percent bilaterally and again stated appellant's hearing was normal.

By letter dated May 13, 2002, appellant requested a review of the written record.

² Appellant was also sent a letter on March 6, 2002.

By decision dated October 30, 2002, the Office hearing representative affirmed the Office's April 18, 2002 decision.

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury."³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁵ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based upon a complete factual and medical background of the claimant,⁶ must be one of reasonable medical certainty⁷ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.

In the present case, appellant was examined by two physicians, Drs. Horgan and Schlager, and neither was of the opinion that she had an employment-related loss of hearing. Dr. Schlager, in fact, found her hearing to be normal. This being the case, there is simply no basis for finding that she has sustained a loss of hearing as a result of her employment.

Dr. Weeks, an audiologist, also found her hearing to be normal.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁵ *See Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁶ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁷ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

Appellant has not submitted any rationalized medical evidence to establish that she sustained a condition causally related to factors of her employment. As appellant has not submitted the requisite medical evidence needed to establish her claim, she has failed to meet her burden of proof.

For the above-noted reasons, appellant has not established that she sustained an injury in the performance of duty.

The October 30, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
May 12, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member